



THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF CAMPAIGN & POLITICAL FINANCE

ONE ASHBURTON PLACE, ROOM 411

BOSTON, MASSACHUSETTS 02108

(617) 727-8352

(800) 462-OCPP

MICHAEL J. SULLIVAN  
DIRECTOR

October 3, 1995  
AO-95-33

William R. Griffin, Town Manager  
Town of Plymouth  
11 Lincoln Street  
Plymouth, MA 02360

Re: Actions by selectmen relating to local ballot questions

Dear Mr. Griffin:

This letter is in response to your August 29, 1995 request for an advisory opinion regarding the expenditure of public resources in connection with local ballot questions. In particular, you have asked three questions which I have paraphrased relating to the actions a board of selectmen ("Board") may take as it relates to local ballot question election issues."

**1. May a Board discuss local ballot questions at local Board meetings?**

Yes. The campaign finance law does not limit discussion by selectmen of local ballot questions at Board meetings.

In Anderson v. City of Boston, 376 Mass. 178 (1978), the Supreme Judicial Court analyzed the provisions of M.G.L. c. 55 in considering whether a municipality had authority to appropriate and expend funds to influence a ballot question. The court held that M.G.L. c. 55 was a comprehensive campaign finance statute which bars such expenditures since it "demonstrate[s] a general legislative intent to keep political fund raising and disbursing out of the hands of nonelective public employees and out of city and town halls." Id., at 186-187. In accordance with the Anderson decision, this office has consistently ruled that governmental entities may not use public resources to support or oppose ballot questions.

Anderson does not, however, prohibit selectmen or other policy-making officials from acting or speaking regarding ballot questions during work hours if in doing so they are acting within the scope of their official responsibilities. See IB-92-02, a copy of which is enclosed for information.

Therefore, a selectman may speak at Board meetings regarding any matter of public policy which is also the subject of a local ballot question. A selectman may state his or her own position on the matter and encourage others to adopt that position. The only restriction imposed by the campaign finance law on such speech is that public resources may not be used to promote or oppose a question, unless such use is either

consistent with the selectman's official responsibilities, as discussed in response to your next question, or incidental and promptly reimbursed.

**2. May a selectman respond to inaccurate or misleading information regarding a local ballot question from another party?**

Yes. Selectman may respond to such information but are subject to certain limitations.

In addition to speaking at Board meetings, selectmen, with or without the aid of their staff, may take any of the following actions, which would appear to be within the scope of a selectman's official responsibilities: (1) write a letter to the press or prepare a press release containing the members' response with a request that the letter or press release be published; (2) respond to individual press or public inquiries; (3) assign a staff member to analyze a question if the question relates to a matter of public policy within the range of the Board's responsibilities; or (4) vote, as a Board, on a resolution regarding a ballot question which may, if consistent with town practice, be posted on the town hall's bulletin board. However, public funds could not be used to distribute the resolution to voters, since such distribution would not be within the scope of the Board's official responsibilities. See IB-92-02.

Selectmen may not do what ballot question committees are established by the campaign finance law to do. For example, selectmen may not, while at Board meetings, raise or spend funds to influence the outcome of a ballot question. Similarly, selectmen may not use a city or town's public resources to distribute advocacy or even "informational" newsletters regarding ballot questions absent express statutory authorization.<sup>1</sup>

If a group of persons seeking to influence the outcome on a ballot question distributes a flyer containing inaccurate or misleading information, selectmen wishing to distribute a flyer to voters advocating a vote either for or against a question or providing more complete or accurate information should organize a ballot question committee to raise monies and arrange for the distribution of a flyer.

**3. May the Board of Selectmen distribute a notice to town employees in response to statements made by union leaders regarding a ballot question?**

No. Although we recognize that the notice may be related to union-management relations governed by M.G.L. c. 150E, public funds may not be used to distribute a notice intended to

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<sup>1</sup> "Even a truly objective flyer including a fair and impartial summary of a ballot question and arguments by proponents and opponents may not be distributed to voters or a class of voters absent statutory authorization." See M-95-06.

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influence the vote of a class of voters. A notice may, however, be prepared for and voted on by the Board and subsequently posted in a city or town hall in a manner similar to other such notices.

This opinion has been rendered solely on the basis of representations made in your letter, and solely in the context of M.G.L. c. 55.

Please do not hesitate to contact this office should you have additional questions about this or any other campaign finance matter.

Sincerely,

A handwritten signature in cursive script, reading "Michael J. Sullivan". The signature is written in dark ink and is positioned above the printed name and title.

Michael J. Sullivan  
Director

MJS/cp